

BOARD OF APPEALS
for
MONTGOMERY COUNTY

Stella B. Werner Council Office Building
100 Maryland Avenue
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Case No. S- 2463

**PETITION OF BAR-T INC.
(BAR-T AT WAREDACA)**

OPINION OF THE BOARD
(Hearings held May 2 and 9, 2001)
(Effective Date of Opinion: January 17, 2002)

BACKGROUND

Case No. S-2463 is a petition filed by Bar-T, Inc. (the "Applicant") for a special exception pursuant to §59-G-2.13.1 (Child Day Care Facility) of the Zoning Ordinance to permit the operation of a child day care facility/summer camp for a maximum of 125 campers and 32 staff.

Pursuant to §59-A-4.11(a) of the Zoning Ordinance, the Board of Appeals held public hearings on May 2 and 9, 2001 on the above-captioned case.

The Board called one witness from the Maryland National Capital Park and Planning Commission ("M-NCPPC"), Judy Daniel, the Zoning Analyst who prepared the M-NCPPC Staff Report (Exhibit No. 19).

Emily J. Vaias and Yum Yu Cheng of Linowes and Blocher LLP appeared on behalf of the Applicant. Five witnesses were called in support of the application: Joseph F. Richardson, Vice-President of Bar-T, Inc.; Mark Orens, Director of Bar-T, Inc.; Alfred S. Blumberg, II, a land planner; C. Craig Hedberg, a transportation planner; and Stephen E. Crum, a civil engineer.

Martin Klauber, the People's Counsel of Montgomery County, Maryland, also participated in the proceedings.

Decision of the Board: Special exception **GRANTED**, subject to the
Conditions enumerated below.

EVIDENCE PRESENTED

1. The property which is the subject of this special exception request consists of 40 acres of land located at 4015 Damascus Road, which is in the Rural Density Transfer Zone (the "Property"). The Property is part of a larger 192.94-acre parcel ("Parcel P606"). Access to Parcel P606 is via two existing paved driveways located on the south side of the Property off of Damascus Road.
2. This Petition requests use of the Property as an extension of its existing day care/summer camp program under Special Exception No. CBA-1202A, known as the Bar-T Ranch, a 12-acre camp approximately 4 miles away from the Property in Laytonsville, Maryland.
3. The Property has rolling topography with pasture, woodland and a large pond in the center of the site with two adjacent smaller ponds. A stream flows northward from the ponds into the Hights Branch.
4. The surrounding neighborhood is rural in character and includes the small communities of Unity and Sunshine as well as several large agricultural parcels and large lot residential development. The immediately surrounding properties are zoned RDT like the Property.
5. Rufus B. Butts and Marian M. H. Butts, Trustees, are owners of Parcel P606 (the "Owners"). Under an Agreement dated March 13, 1992 (Exhibit No. 8), the Owners lease the Property to a horseback riding camp called Camp Waredaca, Inc. ("Camp Waredaca") which in turn subleases the Property to the Applicant for its use from mid-June to August.
6. A maximum of 125 children and 12 staff are transported from Bar-T Ranch by three buses to the Property using the western driveway. The buses do not remain on the Property. After the buses drop off the campers at approximately 9:40 a.m., they return at approximately 2:30 p.m. to take the campers back to Bar-T Ranch for dismissal. Approximately 20 additional staff members drive and/or carpool in a maximum of 16 individual vehicles to the Property. There are 38 existing parking spaces on the Property with a looped driveway that circles back out to the main driveway.
7. The Property offers recreational opportunities not available at the Bar-T Ranch. The campers can choose from 8 outdoor activities: (1) fishing; (2) high ropes; (3) canoe; (4) nature trail; (5) horseback riding; (6) obstacle course; (7) outdoor wall climbing; and (8) biking. Staff from Camp Waredaca provide horseback riding instruction for the campers.
8. By lease agreement, the Applicant is permitted use of existing structures on the Property for storing its play equipment and boats and the use of the bathroom, dining facilities and rustic cabins. The rustic cabins are used on rainy days for indoor activities and to accommodate approximately 60 children for summer camp sleepovers on four Friday nights when the children are transported to the Property on Friday afternoon and picked up by their parents on Saturday morning.

9. Uses on the front portion of Parcel P606 include a single-family house, horse barn, several accessory farm structures, four rustic cabins, a dining hall, and a bath house clustered near Damascus Road. The Owners live in the house and the other buildings are used for a year-round commercial riding stable and the Camp Waredaca summer day camp where children engage in horseback riding activities.
10. The commercial riding stable has operated as a legal nonconforming use since 1953.
11. Camp Waredaca operates from mid-June to mid-August, Monday to Friday, 8:00 a.m. to 5:00 p.m. The majority of the activities related to Camp Waredaca occur within 30 acres centered around the indoor riding ring. Camp Waredaca has 6 staff members and a maximum of 44 children in its day camp and horseback riding activities. All the children are dropped off by their parents between the hours of 8:00 a.m. and 8:30 a.m. using the easternmost driveway closest to Howard Chapel Road.
12. The Carol Jean Foundation (the "Foundation"), a non-profit organization, operates a residential camp facility on Parcel P606 called Camp Friendship, which serves children with cancer and their siblings under Special Exception S-1779 granted in March 1990. The Foundation leases approximately 25 acres of Parcel P606 north of the largest pond and extending back to the northern property line. Camp Friendship has five dormitories, an infirmary, an indoor activity and administrative building, a camp store and a swimming pool.
13. Camp Friendship is an overnight and day camp serving a maximum of 100 children, ages 7 to 17, from June through August, Monday through Friday, with some children staying over on the weekend. The children are transported to and from the camp by bus using the western driveway. A maximum of 50 staff live at the camp with the children and arrive by car on Saturday, Sunday, or Monday mornings. The camp week starts on Monday after the morning peak hours and ends on Friday before the evening peak hours.
14. The activities of the Applicant's campers will not require use of the Camp Friendship facilities or interfere with the use of its leased property. While both programs will use the ponds, they are scheduled for different hours of the day. The Applicant's campers will be on the Property, which is in the southern portion of Parcel P606 and the Camp Friendship children are farther north. Also, although there will be no interaction between Camp Waredaca campers and the Applicant's campers, some Camp Waredaca staff will give riding lessons to the Applicant's campers at different times and locations on the Property.
15. The Bar-T Ranch summer camp has received accreditation from the American Camping Association ("ACA"), and has received high marks in several evaluation areas for its day camp since 1997 when it became an ACA member.

16. The Property is subject to the Olney Master Plan, however, the Master Plan does not make specific recommendations for this Property.
17. The Natural Resource Inventory and a preliminary Forest Conservation Plan were submitted and approved (Exhibit No. 12). The Applicant proposes to save all forest on the Property. In lieu of a final record plat delineating all conservation easements, the Owners will record in the land records a Declaration of Covenants stating that no forest will be removed and that the streams and stream valley buffer areas will be protected from disturbance by the livestock.
18. The Property is located within the Patuxent Watershed and its primary management area. The proposed Special Exception use is exempt from stormwater management regulations because only existing facilities and buildings are to be used and no land disturbance is proposed.
19. A Consent Agreement for Camp Waredaca is recorded in Liber 18847 at Folio 98 in the Land Records of Montgomery County. The Consent Agreement permits 207 children and staff to use the existing septic system.
20. The traffic study submitted by the Applicant (Exhibit Nos. 10 and 18) shows that the traffic at the Property is projected to remain the same and concludes that all intersections will continue to function below the 1450 Critical Lane Volume (CLV) Standard established for the Rural Policy Area with the current program, enrollment, shuttle bus/carpool usage.
21. The M-NCPPC staff analyzed the proposed Special Exception and recommended approval with conditions.
22. The Planning Board recommended approval with conditions (Exhibit No. 20).

FINDINGS OF THE BOARD

Special Exception General Standards

The Board finds that the proposed Special Exception meets the general standards for granting special exceptions found in §59-G-1.2 as follows:

Section 59-G-1.2.1 Standard for Evaluation

A special exception must not be granted absent the findings required by this Article. In making these findings, the Board of Appeals, Hearing Examiner, or District Council, as the case may be, must consider the inherent and non-inherent adverse effects of the use on nearby properties and the general neighborhood at the proposed location, irrespective of adverse effects the use might have if established elsewhere in the zone. Inherent adverse effects alone are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual

characteristics of the site. Non-inherent adverse effects, alone or in conjunction with inherent adverse effects, are a sufficient basis to deny a special exception.

The inherent aspects of a day care facility or camp include various outdoor activities for children, delivery of food and supplies to the Property, staff arrivals and departures, and buses transporting children. The inherent effects of these activities include noise from the children and vehicles, however, these activities will not have any adverse effects on the neighborhood because Parcel P606 is very large and the subject Property used by the Applicant is centrally located and is 600 feet from the east property line and 250 feet from the closest single-family home, which is owned by the Owners' daughter. There are no non-inherent adverse effects caused by the physical or operational characteristics of the Applicant's camp on the Property.

Section 59-G-1.21 General Conditions

(a) *A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:*

(1) *Is a permissible special exception in the zone.*

The Property is zoned RDT and child day care facilities are permitted by special exception in the RDT Zone under § 59-C-1.31.

(2) *Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.*

The proposed Special Exception complies with the standards and requirements for a child day care facility under §59-G-2.13.1.

(3) *Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the commission. Any decision to grant or deny special exception must be consistent with any recommendation in an approved and adopted master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.*

The Special Exception is consistent with the Olney Master Plan (the "Master Plan") in that the proposed use furthers the open space goals of providing recreational activities that do not require substantial buildings or traffic impact.

- (4) *Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses.*

The proposed Special Exception use is consistent and in harmony with the mixed low-density residential and rural agricultural character of the area. No new facilities will be constructed on the Property and all of the day camp activities are conducted outside, except that during rainy days, the campers will use the existing structures on the Property, and during the sleepovers the cabins are used. The three buses used to transport the children will not have an impact on traffic circulation in the area and there is sufficient space to load and unload at the parking lot. There are two other camps operating on Parcel P606, but the addition of Applicant's campers does not change the overall character of the Property or the rural character of the area.

- (5) *Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

The activities of Applicant's campers are setback from the boundaries of Parcel P606 and will not have any detrimental effects on the surrounding properties. The campers' activities will include horseback riding, biking, fishing, outdoor wall climbing, swimming and boating in the pond, and use of a high ropes and obstacle course along with occasional sleepovers. The noise the campers make in engaging in these activities is minimal considering the large size of the Property and the noise of the children playing will be sufficiently buffered by woodland and stream valleys.

- (6) *Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

The proposed use will not cause any objectionable noise, odors, dust, illumination, or physical activity on or around the Property.

- (7) *Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with recommendations of a master or sector plan do not alter the nature of an area.*

The proposed use even when considered in conjunction with the other uses on Parcel P606 will not adversely affect the character of the area and in fact helps to promote the rural character.

- (8) *Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Because the Special Exception satisfies the standards of the state and county it will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area of the Property, irrespective of any adverse effects the use might have if established elsewhere in the RDT Zone.

- (9) *Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.*

A Consent Agreement with the Well and Septic Division of the Department of Permitting Services, recorded in the Land Records at Liber 18847 at Folio 98, states that the facilities are sufficient. The proposed use is adequately served by the local police and fire departments.

- (i) *If the special exception use requires approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Planning Board at the time of subdivision review. In that case, subdivision approval must be included as a condition of the special exception.*

A preliminary plan of subdivision is not required.

- (ii) *With regard to findings relating to public roads, the Board, the Hearing Examiner or the District Council, as the case may be, must further determine that the proposal will have no detrimental effect on the safety of vehicular or pedestrian traffic.*

The proposed use will have no detrimental effect on the safety of vehicular or pedestrian traffic.

Special Exception - Specific Standards

The Board finds that the proposed Special Exception meets the applicable specific standards and requirements of §59-G-2.13.1 as follows:

Section 59-G-2.13.1: Child Day Care Facility

A child day care facility for 31 or more children may be approved by the Board of Appeals subject to the following regulations:

- (1) A plan is submitted showing the location of all buildings and structures, parking spaces, driveways, loading and unloading areas, play areas and other uses on the site.*

Based upon the Site Plan showing the location of all the buildings and structures, parking spaces, driveways, loading and unloading areas, play areas and other uses on the Property and the evidence presented, the Special Exception conforms with this requirement (Exhibit 23, Site Plan).

- (2) Parking is provided in accordance with the Parking Regulations of Article 59-E. The number of parking spaces may be reduced if the applicant demonstrates that the full number of spaces required in Section 59-E-3.7 is not necessary because: (A) existing parking spaces are available on adjacent property or on the street abutting the site that will satisfy the number of spaces required; or (B) a reduced number of spaces would be sufficient to accommodate the proposed use without adversely affecting the surrounding area or creating safety problems.*

The Board will reduce the number of required parking spaces from 53 to 38 because it finds that the bus and carpool system requires fewer parking spaces and the reduced number of spaces will not adversely affect the surrounding area or create safety problems.

- (3) An adequate area for the discharge and pick up of children is provided.*

There is sufficient space and turning area in the parking lot for the buses to discharge and pick up children.

- (4) The petitioner submits an affidavit that the petitioner will:*
(A) comply with all applicable State and County requirements;
(B) correct any deficiencies found in any government inspection; and
(C) be bound by the affidavit as a condition of approval for this special exception

The Applicant submitted an affidavit (Exhibit No. 5) complying with this requirement.

- (5) The use is compatible with surrounding uses and will not result in a nuisance because of traffic, parking, noise or type of physical activity.*

The Special Exception will be compatible with the surrounding uses and will not result in a nuisance because of traffic or parking in that all of the Applicant's campers arrive in three buses, and 20 staff arrive in a maximum of 16 separate vehicles, thus there are no traffic issues. Further, the noise from the children does not create a nuisance, nor do their physical activities.

(6) A landscaping plan must be submitted showing the location, height or caliper and species of all plant materials.

A simplified Forest Stand Delineation (Exhibit No. 12) was submitted and approved as an alternative to a landscaping plan. Because no new facilities are proposed for this Property, exemption from Forest Conservation Law was granted and no landscaping is necessary.

(7) In the one-family residential zones, facilities providing care for more than 30 children must be located on a lot at least 500 square feet per child.

This requirement is not applicable because the Property is located in the agricultural zone. Nevertheless, the proposed 40-acre Property provides 13,939 square feet per child.

Conditions

Based upon the foregoing information, the Board GRANTS the Special Exception for a Child Day Care Facility, subject to the following conditions:

1. The petitioner shall be bound by all of its testimony and exhibits of record, the testimony of its witnesses and representations of its attorneys, to the extent that such evidence and representations are identified in the board's opinion granting the special exception or variance.
2. The number of Applicant's campers allowed on the Property is limited to a maximum of 125 children.
3. The number of Applicant's employees allowed on the Property is limited to a maximum of 32 employees.
4. All transportation of children and staff between Bar-T Ranch and the Property must be by bus.
5. Applicant's campers and staff must enter the Property via the western driveway access from Damascus Road.
6. The 20 staff that do not arrive by bus from the Bar-T Ranch must utilize carpools so that not more than 16 vehicles are used to transport such staff to the Property.
7. No more than four Friday night sleepovers for no more than 60 children during the summer sessions are permitted.
8. The Applicant must record a Declaration of Covenants stating that no forest will be removed from the site and that the streams and stream valley buffer areas will be protected from disturbance by the livestock.

On a motion by Angelo M. Caputo, seconded by Louise L. Mayer, with Donald H. Spence, Jr., Chairman and Donna L. Barron in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the resolution required by law as its decision on the above-entitled case.

Board member Mindy Pittell Hurwitz was necessarily absent and did not participate in the Resolution.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 17th day of January, 2002.

Katherine Freeman
Executive Secretary to the Board

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the Zoning Ordinance). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and any party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedures.

See Section 59-A-4.53 of the Zoning Ordinance regarding the twenty-four months' period within which the special exception granted by the Board must be exercised.

See Section 59-A-3.2 of the Zoning Ordinance regarding Use and Occupancy Permit for a Special Exception.